

1 TROUTMAN PEPPER HAMILTON  
2 SANDERS LLP  
3 Justin D. Balser, Bar No. 027850  
4 justin.balser@troutman.com  
5 5 Park Plaza  
6 Suite 1400  
7 Irvine, CA 92614  
8 Telephone: 949.622.2700  
9 Facsimile: 949.622.2739

10 TROUTMAN PEPPER HAMILTON  
11 SANDERS LLP  
12 Ben Lewis Wagner, Bar No. 243594  
13 ben.wagner@troutman.com  
14 11682 El Camino Real  
15 Suite 400  
16 San Diego, CA 92130-2092  
17 Telephone: 858.509.6000  
18 Facsimile: 858.509.6040

19 Attorneys for Plaintiff  
20 SLEEP NUMBER CORPORATION

21  
22 UNITED STATES DISTRICT COURT  
23  
24 DISTRICT OF ARIZONA  
25

26 Sleep Number Corporation  
27 Plaintiff,  
28 v.  
Anonymous Ultimate Licensee of  
COMFORT.COM;  
WWW.COMFORT.COM,  
Defendant.

Case No. 2:23-cv-00377-MTL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT**

1       **I. INTRODUCTION**

2                   Pursuant to F.R.C.P. 55(b)(2), Plaintiff SLEEP NUMBER CORPORATION  
 3 ("Plaintiff" or "SLEEP NUMBER") moves for entry of default judgment against Defendant  
 4 ANONYMOUS ULTIMATE LICENSEE OF COMFORT.COM (hereafter referred to as  
 5 the "Defendant" and the site hereafter referred to as the "Domain"). In December 2021,  
 6 Defendant, an anonymous party, made unauthorized online access to and hijacked the  
 7 Domain from Plaintiff without its permission. While holding the Domain, Defendant  
 8 generated click-through ad revenues through the Domain and ran a click-bait scheme that  
 9 misdirected unsuspecting consumers looking for Plaintiff's products to sites unaffiliated  
 10 with Plaintiff. In stealing the Domain, Defendant cybersquatted upon the Domain and  
 11 misappropriated Plaintiff's federally registered SLEEP NUMBER trademark and  
 12 unregistered COMFORT.COM trademark, which consumers have come to closely  
 13 associate together, and Defendant stole the Domain with the bad faith intent to profit from  
 14 the confusing similarity of the stolen Domain to Plaintiff's marks. Defendant's  
 15 unauthorized access to the Domain also interfered with Plaintiff's backend business  
 16 operations run through the Domain.

17                  Plaintiff acted fast to obtain injunctive relief against the cybersquatter Defendant.  
 18 Plaintiff filed its Complaint on March 2, 2023. (Dkt. 1). On March 3, 2023, the Court issued  
 19 its Temporary Restraining Order and authorized alternative personal service by email upon  
 20 Defendant. (Dkt. 9). On March 7, 2023, and consistent with the Court's order, Plaintiff  
 21 posted a \$5,000 cash bond with the Clerk of Court. (Dkt. 10). On March 15, 2023, Plaintiff  
 22 filed its proof of service of the summons, complaint, and temporary restraining order. (Dkt.  
 23 17). After the Court entered its TRO, registrar GoDaddy.com transferred the Domain to  
 24 Plaintiff, and disclosed the reported name of the Defendant, which turned out to be a bogus  
 25 name (first and last name: "Comfort Admin"). On March 17, 2023, the Court entered its  
 26 preliminary injunction enjoining Defendant from further interference with the Domain,  
 27 again finding Plaintiff was likely to prevail on each of its claims. (Dkt. 22). Plaintiff served  
 28 the order as directed by the Court. (Dkt. 24).

1       Despite being served according to the Court's order, Defendant has failed to reply or  
 2 otherwise participate in this litigation. (*See Declaration of Ben L. Wagner In Support of*  
 3 *Motion for Entry of Default and Default Judgment ("Wagner Decl.") at ¶¶ 2-5*). Plaintiff  
 4 filed an application for entry of default against Defendant on May 9, 2023, and the Court  
 5 entered default against Defendant on May 10, 2023. (Dkt. 26-27). Based on Defendant's  
 6 failure to respond or participate in this litigation, and on the Verified Complaint, Plaintiff  
 7 now seeks entry of default judgment against Defendant consistent with the terms of the  
 8 Preliminary Injunction entered by the Court (Dkt. 22). Specifically, Plaintiff's request for  
 9 default judgment seeks injunctive relief (1) barring Defendant (and any agents thereof and  
 10 controlling third parties) from interfering in any way with Plaintiff's use or possession of  
 11 the COMFORT.COM domain, (2) barring Defendant from trafficking in, registering, or  
 12 using any domain name containing the SLEEP NUMBER trademark and/or the  
 13 COMFORT.COM trademark, or any variation of those terms, and (3) making permanent  
 14 the previous provisional transfer to Plaintiff of the COMFORT.COM domain. Upon entry  
 15 of default judgment, Plaintiff further requests that the Court release the bond Plaintiff posted  
 16 in this action. Plaintiff respectfully requests that this Court grant its Motion for Default  
 17 Judgment against Defendant.

18 **II.     LEGAL STANDARD**

19       “[I]n defaulting, defendants are deemed to have admitted all well-pleaded factual  
 20 allegations contained in the complaint.” *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 851  
 21 (9th Cir. 2007) (citing FRCP 55(a)). The only exception to this rule is as to the “amount of  
 22 damages.” *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). As  
 23 explained below, the well-pled factual allegations in Plaintiff’s Complaint establish  
 24 Defendant’s cybersquatting in violation of 15 U.S.C. § 1125(d), violation of the CFAA, and  
 25 conversion of Plaintiff’s property.

26       Following the entry of default pursuant to Fed. R. Civ. P. 55(a), the Court may  
 27 exercise its sound discretion and enter a judgment against the defaulting defendant under  
 28 Federal Rule of Civil Procedure 55(b). *See* Fed. R. Civ. P. 55(b)(2); *see also Aldabe v.*

1      *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (“The district court’s decision whether to enter  
 2 a default judgment is a discretionary one.”). A default judgment is appropriate where the  
 3 defendant “has received actual or constructive notice of the filing of the action and failed to  
 4 answer.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 690  
 5 (9th Cir. 1986). In determining whether to exercise its discretion, the Court must first  
 6 “assess the adequacy of service of process on the party against whom default is requested.”  
 7 *Penpower Tech. Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008) (internal  
 8 citations of quotation marks omitted). Once the Court determines that service was sufficient,  
 9 it may consider the following factors (collectively, the “*Eitel* Factors”) in deciding whether  
 10 to enter a default judgment: (1) the possibility of prejudice to plaintiff; (2) the merits of  
 11 plaintiff’s substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at  
 12 stake in the action; (5) the possibility of dispute concerning material facts; (6) whether  
 13 defendant’s default was the product of excusable neglect; and (7) the strong public policy  
 14 favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).  
 15 In considering the *Eitel* Factors, the “factual allegations of the complaint, except those  
 16 relating to the amount of damages, [are] taken as true.” *TeleVideo Sys., Inc. v. Heidenthal*,  
 17 826 F.2d 915, 917-918 (9th Cir. 1987). Finally, a default judgment may be entered without  
 18 a hearing if “the amount claimed is a liquidated sum or capable of mathematical  
 19 calculation.” *David v. Fedler*, 650 F.2d 1154, 1161 (9th Cir. 1981).

### 20      III. ARGUMENT

#### 21      A. Plaintiff has Satisfied the Procedural Requirements for Entry of 22      Default Judgment Against Defendant

23      Defendant is subject to personal jurisdiction in this Court by virtue of the forum  
 24 selection clauses Defendant agreed to when Defendant transferred the Domain to the  
 25 registrar GoDaddy.com and registered the Domain to be held by DOMAINS BY PROXY,  
 26 both of which have registration agreements with all registrants using their services that  
 27 require resolution of all disputes in Arizona arising or related to the Domain. (Dkt. 1, ¶ 9;  
 28 Dkt. 22, ¶ 9). Further, as to Plaintiff’s first claim, *in rem* jurisdiction and venue are proper

1 in this District pursuant to 15 U.S.C. § 1125. (Dkt. 1, ¶ 7).

2 Default was entered by the clerk on May 10, 2023 (Dkt. 27)—what remains is  
 3 Plaintiff's request to enter default judgment against Defendant granting the appropriate  
 4 relief.

5 **B. Plaintiff Has Established Defendant's Liability as to Each Claim  
 6 Alleged in the Complaint for Which Default Judgment is Sought**

7 In order for the Court to enter default judgment, the Complaint must state a claim  
 8 upon which Plaintiff may recover. *See Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261,  
 9 1267 (9th Cir. 1992). The Court already found Plaintiff likely to succeed in establishing  
 10 liability on each of its causes of action at the TRO and preliminary injunction stages. (Dkts.  
 11 9, 22). Nothing has changed. Here, Plaintiff's Complaint pleads facts sufficient to establish  
 12 Defendant's liability for (1) Cybersquatting, (2) violation of the CFAA, and (3) Conversion.

13 1. Willful and Intentional Cybersquatting Under 15 U.S.C. § 1125(d)

14 Plaintiff should prevail on the merits of its first and second claims for cybersquatting  
 15 because, taking Plaintiff's allegations alleged in its Complaint as true, Plaintiff has pled that  
 16 it is entitled to relief.

17 To succeed on its claims for cybersquatting, Plaintiff must plead that "(1) the  
 18 defendant registered, trafficked in, or used a domain name; (2) the domain name is identical  
 19 or confusingly similar to a protected mark owned by the plaintiff; and (3) the defendant  
 20 acted with bad faith intent to profit from that mark." *DSPT Intern., Inc. v. Nahum*, 624 F.  
 21 3d 1213, 1218-19 (9th Cir. 2010) (citing 15 U.S.C. 1125(d)). Each of these elements is  
 22 satisfied here.

23 The well-pled allegations in Plaintiff's Complaint establish that Defendant  
 24 registered, trafficked in, and used Plaintiff's hijacked Domain with a bad-faith intent to  
 25 profit from Plaintiff's federally-registered SLEEP NUMBER trademark and unregistered  
 26 COMFORT.COM trademark. (Dkt. 1, ¶¶ 17-22, 23-28). Plaintiff's SLEEP NUMBER mark  
 27 (first use in 2002) is registered and famous, with extensive secondary meaning in the United  
 28 States. (Dkt. 1, ¶ 12). Plaintiff acquired the COMFORT.COM domain in 1995, and since

1 that time it has consistently been a major landing page for consumers looking to purchase  
 2 products under Plaintiff's Sleep Number and Select Comfort brands. (*Id.*, ¶¶ 13-14).  
 3 Plaintiff's COMFORT.COM domain and trademark was used with countless millions of  
 4 customers and strongly associated with the SLEEP NUMBER mark. (*Id.* ¶ 15). Plaintiff's  
 5 use of the Domain for this extended period gives Plaintiff common law rights in the  
 6 COMFORT.COM trademark. (*Id.*)

7 On or around December 31, 2021, Defendant made unauthorized access through U.S.  
 8 computers and stole the Domain name registration from Plaintiff. Defendant then promptly  
 9 transferred registrars to the registrar GoDaddy.Com, LLC, and enrolled in privacy  
 10 protection through DOMAINS BY PROXY, LLC. On or around February 28, 2023,  
 11 Defendant transferred the Domain to a server in Germany and placed the Domain for sale  
 12 through GoDaddy Auctions with a "buy now" price of \$495,000. While the Defendant held  
 13 the Domain, Defendant generated click-through ad revenues through the Domain and ran  
 14 a click-bait scheme that misdirected unsuspecting customers looking for Plaintiff's products  
 15 to sites unaffiliated with Plaintiff or its products. Further, Defendant's transfer of the  
 16 Domain to servers in Germany disabled Plaintiff's back-end operations, alerting Plaintiff to  
 17 Defendant's bad faith actions. (Dkt. 1, ¶¶ 11-30). Plaintiff has therefore pled facts sufficient  
 18 to establish its cybersquatting claims—Defendant hijacked Plaintiff's Domain and  
 19 registration and used Plaintiff's Domain name with a bad faith intent to profit from  
 20 Plaintiff's COMFORT.COM mark and its connection with Plaintiff's famous SLEEP  
 21 NUMBER mark. (*Id.*) Default judgment against Defendant is warranted. (*See id.*; *see also*  
 22 *Concord Servicing Corp. v. Concord Resol. Inc.*, No. CV-15-01280-PHX-JAT, 2016 WL  
 23 3653972, at \*3 (D. Ariz. July 7, 2016) (granting default judgment on cybersquatting claim  
 24 where plaintiff established that defendant intended to create "initial interest confusion,"  
 25 trade on Plaintiff's goodwill, and "unfairly compete.").

26 Defendant's theft of Plaintiff's Domain is among the most egregious examples of  
 27 cybersquatting and liability is established for purposes of default judgment.  
 28

1                   2.     Violation of the CFAA—18 U.S.C. § 1030

2                 Plaintiff's well-pled complaint likewise sets forth facts sufficient to support default  
 3 judgment of its CFAA claim against Defendant. Defendant used online access to steal the  
 4 Domain registration account without authorization and attempted to auction it for \$495,000.  
 5 (Dkt. 1 ¶¶ 17-19). The facts pled in Plaintiff's Complaint demonstrate that Defendant  
 6 violated at least 18 U.S.C. § 1030(a)(2)(C) and 18 U.S.C. § 1030(a)(5)(C) of the CFAA.  
 7 (*See id*); *see also NovelPoster v. Javitch Canfield Group*, 140 F. Supp. 3d 954, 961 (N.D.  
 8 Cal. 2014) (claim of unauthorized takeover of online accounts causing loss over \$5,000  
 9 from inability of plaintiff to access account satisfies at least two bases for civil liability  
 10 under CFAA, 18 U.S.C. § 1030(a)(2)(C) and 18 U.S.C. § 1030(a)(5)(C)); *see also Xianyuan*  
 11 *Wang v. Bailin Fang*, 2022 U.S. Dist. LEXIS 235033, \*7, 2022 WL 18146304 (D. Az. Dec.  
 12 20, 2022) (injunction granted for CFAA claim based on harm from loss of use of "domain  
 13 name ... because only defendant could access Plaintiff's GoDaddy account" for that  
 14 domain); *Solutions v. Ahmad Rashid Mohammed*, 2012 U.S. Dist. LEXIS 163033, \*6, 2012  
 15 WL 5825824 (S.D. Tex. Nov. 15, 2012).

16                   3.     Conversion

17                 Last, taking the facts set forth in Plaintiff's Complaint as true, Plaintiff has pled a  
 18 viable claim for conversion under applicable Minnesota law. For the state law claim of  
 19 conversion, over which the Court has supplemental jurisdiction, Minnesota law applies as  
 20 the property owner SLEEP NUMBER is located there, the conversion occurred there, and  
 21 SLEEP NUMBER did nothing to direct its activities to Arizona. *CRS Recovery v. Laxton*,  
 22 600 F.3d 1138, 1142 (9th Cir. 2010) (choice of law rules apply to law of state where  
 23 plaintiff's conversion injury occurred); (Dkt. 22 ¶ 22).

24                 Minnesota holds that "a domain name is property" and "is property for the purposes  
 25 of protection from conversion." *Sprinkler Warehouse v. Systematic Rain*, 859 N.W.2d 527,  
 26 531 (Minn. App., 2015) applying inter alia *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003).  
 27 "The elements of common law conversion are: (1) plaintiff holds a property interest; and  
 28 (2) defendant deprives plaintiff of that interest." *Staffing Specifix v. TempWorks Mgmt.*

1       *Servs.*, 896 N.W.2d 115, 125 (Minn. App. 2017). As set forth in Plaintiff’s Complaint,  
 2 Plaintiff has established that it holds a property interest in the Domain, and that Defendant  
 3 deprived Plaintiff of that interest by hijacking the Domain registration and ultimately  
 4 transferring the Domain server to Germany, which prevented Plaintiff from accessing its  
 5 Domain registration and controlling its back-end operations through the Domain. (Dkt. 1 ¶¶  
 6 11-30). In short, the well-pled facts set forth in Plaintiff’s Complaint support its claim for  
 7 conversion and entry of default judgment against Defendant is appropriate. *See id.*

### 8           C.     The *Eitel* Factors Warrant Entry of Default Judgment

9           The discretionary factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th  
 10 Cir.1986) also weigh in favor of default judgment. “In applying this discretionary standard,  
 11 default judgments are more often granted than denied.” *Affinity Grp., Inc. V. Balser Wealth*  
 12 *Mgmt., LLC*, No. 05CV1555 WQH (LSP), 2007 WL 1111239, at \*1 (S.D. Cal. Apr. 10,  
 13 2007). Where a defendant “has yet to respond or participate in this litigation, . . .  
 14 [t]raditionally, this means the first, fifth, sixth, and seventh *Eitel* factors are easily  
 15 addressed.” *L. Offs. of Diana Maier PC v. DianaMaierLaw.com*, No. CV-20-02235-PHX-  
 16 MTL, 2021 WL 3565733, at \*3 (D. Ariz. Aug. 12, 2021).

17           The first factor, prejudice, is shown by default admitting the truth of the pleadings—  
 18 since Plaintiff “would be without other recourse for recovery.” *DianaMaierLaw.com*, 2021  
 19 WL 3565733 at \*3 (citing *PepsiCo, Inc. v. Cal. Sec. Cans.*, 238 F. Supp. 2d 1172, 1177  
 20 (C.D. Cal. 2002)). Plaintiff would be severely prejudiced absent the entry of default  
 21 judgment. *See Eitel*, 782 F.2d at 1471-72. Defendant should not be able to deprive Plaintiff  
 22 of permanent injunctive relief by failing to respond to this suit. Absent default judgment,  
 23 Plaintiff has no other recourse. *See Paramount Pictures Corp. v. Does*, No. 2:21-CV-09317-  
 24 MCS-SK, 2022 WL 2189633, at \*3 (C.D. Cal. Apr. 20, 2022) (“Defendants also remain  
 25 unidentified [] so it will be difficult for Plaintiffs to get recovery without default judgment.  
 26 This supports entering default judgment.”).

27           The second and third factors (merits of claim and sufficiency of complaint) “are often  
 28

1 analyzed together and require” consideration of whether Plaintiff “has stated a claim on  
 2 which it may recover.” *DianaMaierLaw.com*, 2021 WL 3565733, at \*3. Here, Plaintiff has  
 3 met each factor as illustrated in the discussion of each cause of action, *supra*. Defendant’s  
 4 hijacking of Plaintiff’s Domain and cybersquatting constitutes an egregious scheme that the  
 5 evidence shows was deliberately targeted to profit in bad faith off of Plaintiff’s marks. (Dkt.  
 6 1, ¶¶ 11-30). Plaintiff’s verified Complaint sets forth facts in sufficient detail—facts which  
 7 were corroborated by documents produced in this action (Dkt. 14)—to support entry of  
 8 default judgment against Defendant for Defendant’s abuse of and wrongful access and  
 9 misappropriation of Plaintiff’s domain. (*See id.*); *see also DianaMaierLaw.com*, 2021 WL  
 10 3565733, at \*4 (factors two and three supported default judgment where plaintiff “has  
 11 shown there was bad faith intent to profit” from mark).

12       The fourth *Eitel* factor considers the amount at stake in relation to the seriousness of  
 13 defendant’s conduct. *See Eitel*, 782 F.2d at 1471-72. Where, as here, Plaintiff “does not  
 14 seek monetary damages” “this factor weights in favor of entry of default judgment.” *See*  
 15 *DianaMaierLaw.com*, 2021 WL 3565733, at \*4.

16       The fifth factor, possible dispute of material facts, favors default judgment since all  
 17 factual allegations in the complaint are already “taken as true based on the entry of default  
 18 judgment.” *TeleVideo Sys., Inc.*, 826 F.2d at 917-918. Here, because “all well-pleaded facts  
 19 in the [verified] complaint are taken as true . . . no genuine dispute of material facts would  
 20 preclude granting” Plaintiff’s motion for default judgment. *See DianaMaierLaw.com*, 2021  
 21 WL 3565733, at \*3. No reasonable version of disputed facts could save Defendant from  
 22 liability for hijacking Plaintiff’s Domain for Defendant’s own profit. *See id.* There is no  
 23 disputing the material facts of liability in this case, as the TRO and preliminary injunction  
 24 already showed in force – Defendant had ample opportunity to appear and defend but  
 25 presumably saw the strength of claims and Court’s analysis of the merits and found no  
 26 scenario presenting a defense worth making. Defendant should not be rewarded for failing  
 27 to appear in these proceedings.

28       The sixth factor also “weighs in favor of default judgment,” as Plaintiff “served

1 Defendant [] to the best of its ability under its statutory obligation, [and] it is unlikely that  
 2 its failure to answer was the result of excusable neglect.” *DianaMaierLaw.com*, 2021 WL  
 3 3565733, at \*3 (citing *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065,  
 4 1072 (D. Ariz. 2006)). Defendant’s choice not to respond despite so many orders and items  
 5 served on it in this case is certainly a deliberate and voluntary choice, and with knowledge  
 6 that the domain would be taken away permanently if it did not speak up.

7 The seventh factor, the policy for decisions on the merits, does not disfavor default  
 8 judgment since “the existence of Rule 55(b) indicates that this preference, standing alone,  
 9 is not dispositive.” *DianaMaierLaw.com*, 2021 WL 3565733, at \*3 (citing *PepsiCo, Inc.*,  
 10 238 F. Supp. At 1172); *see also Affinity Group v. Balser Wealth Mgmt.*, 2007 WL 111239  
 11 \*3 (S.D. Cal. Apr. 10, 2007) (“termination of a case before hearing the merits is allowed  
 12 whenever a defendant fails to defend an action.”). In fact, because “where a defendant fails  
 13 to appear and respond as occurred here, a decision on the merits is impossible and default  
 14 judgment is appropriate … this factor weighs in favor of default judgment.” *Wecosign, Inc.*  
 15 v. *IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1083 (C.D. Cal. 2012). Moreover, unlike a  
 16 naked default 21 days after service, this default was preceded by both TRO and preliminary  
 17 injunction proceedings.

18 In sum, as “default judgments are more often granted than denied,” (*Affinity Grp.*  
 19 2007 WL 111239 \*1), and the factors indicate default judgment is warranted here,  
 20 consideration of the *Eitel* factors confirms that default judgment should be entered.

21       **D. The Court Should Award Plaintiff Injunctive Relief and Order The  
 22           TRO / Preliminary Injunction Bond Returned**

23 Plaintiff requests that the Court grant a permanent injunction: (1) barring Defendant  
 24 (and any agents thereof and controlling third parties) from interfering in any way with  
 25 Plaintiff’s use or possession of the COMFORT.COM domain, (2) barring Defendant from  
 26 trafficking in, registering, or using any domain name containing the SLEEP NUMBER  
 27 trademark and/or the COMFORT.COM trademark, or any variation of those terms, and  
 28 (3) making permanent the previous provisional transfer to Plaintiff of the COMFORT.COM

1 domain. Plaintiff also seeks release of the cash bond lodged with the Court in this action by  
 2 Plaintiff. (Dkt. 10).

3       The Lanham Act gives the Court “power to grant injunctions, according to the  
 4 principles of equity and upon such terms as the court may deem reasonable ... to prevent a  
 5 violation” under the Lanham Act. 15 U.S.C. § 1116(a). Plaintiff meets the requisite  
 6 considerations for a permanent injunction including: (1) irreparable injury, (2) inadequacy  
 7 of remedies at law, (3) balance of hardships, and (4) the public interest. *eBay, Inc. v.*  
*MercExchange, LLC*, 547 U.S. 388 at 391; 15 U.S.C. § 1116(a).

9       As the Court’s prior TRO and preliminary injunction orders already found, the test  
 10 for injunctive relief is readily met. (Dkt. 22). “The standard for determining whether a  
 11 permanent injunction should be granted is ‘essentially the same as the standard for a  
 12 preliminary injunction, except that the court determines the plaintiff’s success on the merits  
 13 rather than the plaintiff’s likelihood of success on the merits.’” *Elhalwani v. Bourji*, 2020  
 14 U.S. Dist. LEXIS 45517, \*5 (C.D. Cal. Feb. 28, 2020) quoting *Amoco Prod. Co. v. Village*  
*of Gambell, Alaska*, 480 U.S. 531, 546 n.12 (1987).

16       Plaintiff therefore respectfully requests that the Court enter default judgment against  
 17 Defendant, including injunctive relief restraining Defendant from future acts against  
 18 Plaintiff’s Domain and marks, for the reasons already found warranting preliminary  
 19 injunctive relief. (Dkt. 22 pp.7-9). Plaintiff is presumed irreparably harmed under its  
 20 cybersquatting claim. 15 U.S.C. § 1116(a); *Cisco Sys., Inc. v. Wuhan Wolon Commc’n Tech.*  
*Co.*, No. 5:21-CV-04272-EJD, 2021 WL 4962661, 2021 U.S. Dist. LEXIS 137845, \*16-18  
 21 (N.D. Cal. Jul. 23, 2021). The irreparable harm is substantiated beyond the presumption,  
 22 including rendering more difficult day-to-day operations, threatening its goodwill with  
 23 customers and productivity, and the risk that the COMFORT.COM domain in Defendant’s  
 24 name would be sold for further wrongful use. (Dkt. 22 pp.7-8).

26       Defendant’s harm to Plaintiff’s brand and its customers cannot be fully unwound,  
 27 but it can be prevented from continuing further by permanently enjoining the Defendant  
 28 from its wrongful behavior. Further, Defendant is evading the law by refusing to participate

1 in this litigation. Defendant has demonstrated a willful intent to target Plaintiff's brand and  
 2 its consumer marketplace by hijacking Plaintiff's website and by misappropriating its well-  
 3 known marks, which necessitates broad and lasting injunctive relief.

4 These considerations justify an injunction barring future cybersquatting and use of  
 5 Plaintiff's SLEEP NUMBER trademark and/or the COMFORT.COM trademark, or any  
 6 similar variant thereof, barring Defendant from any future interference with Plaintiff's  
 7 Domain, and making permanent the injunctive relief already granted. *See Concord*  
 8 *Servicing Corp. v. Concord Resol. Inc.*, No. CV-15-01280-PHX-JAT, 2016 WL 3653972,  
 9 at \*4 (D. Ariz. July 7, 2016) (granting permanent injunction where the "Court has already  
 10 found that the Complaint makes out a prima facie claim of . . . cybersquatting" and  
 11 "[c]oupled with the preceding well-pleaded facts and documentary evidence, the Court  
 12 finds that Plaintiff has sufficiently established that it suffered irreparable injury.").

13 Finally, Plaintiff posted a \$5,000 bond for the TRO, which was made applicable to  
 14 the preliminary injunction as well. (Dkt. 10; Dkt. 22 pp.9-10.) Plaintiff requests that the  
 15 Court release the \$5,000 cash bond deposited with the Court in connection with the Court's  
 16 prior injunctive relief, as in light of default judgment and the facts taken as true, and  
 17 permanent injunctive relief being entered, the appropriate course is to return the interim  
 18 bond at the conclusion of the case. *Almeida v. TabelaFipeBrasil.com*, 2020 U.S. Dist.  
 19 LEXIS 116650, \*18-19, 2020 WL 3525822 (E.D. Va. Jan. 24, 2020) (ordering clerk to  
 20 return preliminary injunction bond upon entry of default judgment); *Amazon Content Servs.*  
 21 *LLC v. Kiss Library*, 2021 U.S. Dist. LEXIS 242489, \*19-20, 2021 WL 5998412 (W.D.  
 22 Wa. Dec. 17, 2021) (same).

#### 23 IV. CONCLUSION

24 For the foregoing reasons, Plaintiff respectfully requests that default judgment be  
 25 entered against Defendant on claims for cybersquatting, violation of the CFAA, and  
 26 conversion. Plaintiff requests that the default judgment include an order for injunctive relief  
 27 (1) barring Defendant (and any agents thereof and controlling third parties) from interfering  
 28 in any way with Plaintiff's use or possession of the COMFORT.COM domain, (2) barring

1 Defendant from trafficking in, registering, or using any domain name containing the SLEEP  
2 NUMBER trademark and/or the COMFORT.COM trademark, or any variation of those  
3 terms and (3) making permanent the previous provisional transfer to Plaintiff of the  
4 COMFORT.COM domain. And the \$5,000 bond posted by Plaintiff (Dkt. 10) should be  
5 ordered returned by the clerk. A Proposed Order to this effect has been submitted  
6 concurrently herewith.

7 Dated: May 16, 2023

8 TROUTMAN PEPPER HAMILTON  
9 SANDERS LLP

10 By: s/Ben Lewis Wagner

11 Justin D. Balser  
12 Ben Lewis Wagner

13 Attorneys for Plaintiff  
14 SLEEP NUMBER CORPORATION